1944. File No. O.I-Tax / (Baroda) 49

Legal Dept.

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Subject:— Opinions under the Baroda Income-Tax Act 1940

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C O N T E N T S.

Legal Department File No. O. Income Tax (Baroda)/49.

S.No.	R.I. / O.No.	Subject	Pages.
		Opinions under the Baroda Income Tax Act, 1940.	
1.	2000- 2/9/1949.	Section 57. Whether the order passed by the Maharaja of Baroda granting exemption from income-tax to the two princes in respect of their incomes is legal.	1 - 8.

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Office of the R.L.A.

It appears that the Maharaja of Baroda by his order No.(R) 34/24 dated 9/2/1948 and No.(R)33/2 dated 9-2-1948 granted exemption from income-tax to Princess Khanderao Shivajirao Gaekwar and Udaysinhrao Shivajirao Gaekwar grandsons of His late Highness Sayajirao III. The Special Officer, Political & Services Department, considers that the order of the Maharaja is not intra vires section 57 of the Baroda Income-tax Act but can be justified by sections 3 and 4 of the Baroda Constitution Act, 1940, which are since repealed. The Chief Secretary has requested the R.L.A. to advise whether the order is legal and in accordance with the provisions of the Baroda Income-t Act, and in case it is not legal, whether the Maharaj had any sovereign rights to pass such order otherwise.

2. Section 57 of the Baroda Income-tax provides that the Huzur may make an exemption, reduction in rate, or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of income of any class of persons. It is true that under rule 2 in Chapter II entitled "Exemption from income tax and manner of registration of firms" private income or gain arising from any source of His Highness the Maharaja Saheb or Her Highness the Maharani Saheb has been exempted. That rule, however, does not detract from the power which the Maharaja had of granting exemption in respect of any class of income or in regard to the whole or any part of income of any class of persons. A class must bear a common and exclusive designation and also possess common and exclusive characteristics.(Compare Emperor v. Maniben Kara 34 Bombay Law Reporter 1642). As the orders had to be made upon the individual applications, they were separately passed; but they

.. were passed on the same date. Both the persons asking for exemption as well as their income can be referable to a class. As individuals they belong to the class of the members of His Highness' family, and the income was of the class known as Nemnook. It is to be noted that the order is the order of the Maharaja by way of a resolution, and as such ordinarily it would not be expected to be in the form of a regular rule describing either the class of the individuals or the class of the income. Although, therefore, the exemption may have been granted as a special case, and the order may not be in the strict form of a rule describing the class of persons or the class of income, it falls within the scope of section 37. Viewed in that light the order would be intra vires section 37 of the Baroda Income-tax Act.

3. Moreover, the order was also within the competence of the Maharaja even under the Government of Baroda Act. Section 4 of that Act provides that "notwithstanding any-thing contained in this or any other Act, all powers, legislative, executive and judicial, in relation to the State and its government are hereby declared to be and to have always been inherent in and possessed and retained by His Highness and nothing contained in this or any other Act shall affect or be deemed to have affected the right and prerogative of His Highness to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority". The Baroda Income-tax Act was passed in the year 1939, and at that time the powers, rights and prerogatives of the Maharaja were in no way respected by constitutional limitations of the kind later on provided for by the Government of Baroda Act. Till that Act came to be passed, laws

....in Baroda represented the fiats of the Ruler. The ....section of that Act quoted above made no inroads on ....the prerogatives of the Ruler; but in terms expressly retains his rights and prerogatives. The general rule is that the prerogatives of the Crown cannot be affected or parted with by the Crown except by express statutory authority. The rights and prerogatives in respect of members of His Highness' family have not been parted with under the Government of Baroda Act; for we find it stated in section 27 thereof that there shall not be introduced into or moved in the Dhara Sabha any Bill or amendment or motion or resolution or question which would effect the authority and position of His Highness and the members of His Highness family. This coupled with the power of exemption given to the Ruler under section 57 of the Income - tax Act shows that the rights and prerogatives of the Ruler in respect of granting exemptions to members of his family were exclusively retained by him under the Act; and the general position as regards the retention of powers and prerogatives has been affirmed in section 4 of the Government of Baroda Act. That being the position the principle in Attorney General v. De Keyser's Royal Hotel Limited, 1920 Appeal Cases, 508 (which itself left the position of prerogatives rather uncertain), namely, that where by a statute the Crown is empowered to do what it might heretofore have done by virtue of its prerogative it can no longer act under the prerogative but must act under and subject to the conditions imposed by the statute, would not be attracted in this case. Here on the other hand we find the prerogative in respect of the position of ~~the members~~ members of His Highness' family expressly taken out of the purview of the Dhara Sabha and in accordance with the preservation of prerogative in general in section 4 to have been exclusively reserved to the

the Maharaja. It would have been open to the Maharaja by his fiat to amend or modify mx the Income-tax Act itself in respect of the members of his family and to engraftth thereon special exemptions in their favour. From that point of view the order would be well within the Maharaja's competence.

4. In short the order in question is legal viewed either as an order made under section 57 of the Baroda Income-tax Act or made in exercise of the Maharaja's powers and prerogatives.

Sd/- P. M. LAD,
Remembrancer of Legal Affairs.

U.H. to P.& S. Department No.9990 dated 2nd September 1949

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